

CHROME COMPANY
CUSTOM
PLATING

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources Division

KAREN S. DWORKIN
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-2778

LINDA A. AKERS
United States Attorney
District of Arizona

CINDY JORGENSEN
Assistant United States Attorney
110 South Church Street
Suite 8310
Tucson, Arizona 85701
(602) 670-6511

FILED
APR 26 1991
CLERK, U.S. DISTRICT COURT
BY: DISTRICT OF ARIZONA
DEPUT

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,
Plaintiff,

v.

DAVID KIPNIS, et ux., et al.
Defendants.

CIV 87-650 TUC RMB

PARTIAL CONSENT DECREE

WHEREAS, the United States of America, on behalf of the
Administrator of the Environmental Protection Agency ("EPA"), has
filed a complaint ("the complaint") herein against defendants
David and Dorothy Kipnis and Harry and Rose Fake, pursuant to
Section 107(a) of the Comprehensive, Environmental Response,

101

1 Compensation, and Liability Act of 1980 ("CERCLA"), as amended,
2 42 U.S.C. § 9607(a), for recovery of the costs incurred by the
3 United States in responding to the alleged release and threatened
4 release of hazardous substances at the Chrome Company site,
5 located at 415 East Grant Road, Tucson, Arizona; and
6

7 WHEREAS, the Fake Defendants filed an answer to the
8 complaint, denying liability; and
9

10 WHEREAS, the United States and the Fake Defendants agree
11 that settlement of the dispute between them herein without costly
12 and protracted litigation is in the public interest; and
13

14 WHEREAS, the Fake Defendants by and through their
15 representatives, have agreed to the execution of this partial
16 Consent Decree in final settlement of the claims against the Fake
17 Defendants alleged by the United States in the complaint;
18

19 NOW THEREFORE, without trial, adjudication or admission of
20 any issue of law, fact, or responsibility by the Fake Defendants
21 it is hereby ORDERED, ADJUDGED, and DECREED as follows:
22

23 I. DEFINITIONS

24 The following definitions shall apply to this Decree:

25 A. The "Chrome Company site" is the parcel of land on which
26 EPA's response action took place, and is located at 415 East
Grant Road, at the corner of Grant Road and Geronimo Avenue, Pima
County, Tucson, Arizona.

B. "CERCLA" means the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et

1 seq., as amended by the Superfund Amendments and Reauthorization
2 Act of 1986, Public Law 99-499.

3 C. "The Fake Defendants" refers, to Harry Fake individually
4 and the Estate of Rose Fake.

5 D. The "Effective Date" of this Decree shall be the date
6 upon which it is signed collectively by the United States and
7 defendant Harry Fake.

8 E. The date of "Entry" of this Decree shall be the date it
9 is signed by the Court.

10 F. The term "days" shall mean calendar days.

11 G. Terms not otherwise defined herein shall have their
12 ordinary meaning unless defined in Section 101 of CERCLA, 42
13 U.S.C. § 9601, or in the National Contingency Plan ("NCP"), 40
14 C.F.R. Part 300, in which case, the definition in CERCLA or the
15 NCP shall control.

16 II. JURISDICTION

17 The parties agree that this Court has jurisdiction over the
18 subject matter of this action and has personal jurisdiction over
19 the Fake Defendants pursuant to 42 U.S.C. § 9613(b) and 28
20 U.S.C. §§ 1345 and 2201. Defendants waive any objection they may
21 have to venue in this Court. For purposes of entering and
22 enforcing the provisions of this partial Consent Decree, the
23 complaint states a claim upon which relief can be granted.

24 III. PARTIES BOUND

25 This partial Consent Decree shall be binding upon the United
26

1 States on behalf of EPA, and upon the Fake Defendants, their
2 heirs, agents, successors in interest and assignees.
3

4
5 IV. REIMBURSEMENT FOR RESPONSE COSTS

6 The Fake Defendants shall pay a total of \$3,750 (Three
7 Thousand Seven Hundred and Fifty Dollars) to the United States
8 over the period of one year, plus interest, for reimbursement of
9 the response costs incurred by the United States with respect to
10 the Chrome Company site up to and including the effective date of
11 this decree. Payments of principal and interest shall be made in
12 twelve equal installments in accordance with the schedule
13 attached hereto, with the first payment to be made within thirty
14 (30) days of the entry of this consent decree. This amount
15 shall be made payable by certified or cashier's check to the "EPA
16 Hazardous Substance Superfund" and shall be remitted to EPA
17 Region IX, Attention: Superfund Accounting, P.O. Box 360863M,
18 Pittsburgh, Pa 15251. The transmittal of such payment shall
19 reference the Chrome Company site, and shall be accompanied by
20 correspondence containing the following identifying information:
21 United States v. David Kipnis, et al, DOJ Ref. No. 90-11-3-225,
22 Civil Action No. 87-650 TUC ACM, and the name and complete
23 address of the paying party. Defendants shall send copies of
24 this correspondence to Allyn Stern, Office of Regional Counsel
25 (RC-5) Region 9, U.S. Environmental Protection Agency, 1235
26 Mission Street, San Francisco, CA 94103 and to Karen Dworkin,

1 Department of Justice, P.O. Box 7611 Ben Franklin Station,
2 Washington, D.C. 20044, when payment is made.

3 In the event the Fake Defendants fail to timely make payment
4 as required above, then without further order of the Court, this
5 Decree shall be considered an enforceable judgment for purposes
6 of post-judgment collection in accordance with Rule 69 of the
7 Federal Rules of Civil Procedure, and other applicable federal
8 authority. In that event, the Fake Defendants shall be liable to
9 the United States for interest on the amount owed from the date
10 payment is due pursuant to Section IV. of this partial Consent
11 Decree until the entire sum is collected. The rate of interest
12 shall be the same rate and calculated in the same manner as is
13 set forth in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The
14 Fake Defendants agree to pay to the United States any and all
15 costs incurred by the United States in collecting any and all
16 amounts in default hereunder.

17 Nothing herein shall be construed to limit the authority of
18 the United States to seek such other relief, in law or in equity,
19 available to it for Defendants' violation of this partial Consent
20 Decree, and the United States expressly reserves all such
21 remedies available to it to enforce the provisions of this
22 partial Consent Decree.

23 The Fake Defendants shall bear their own costs and attorneys
24 fees in this matter.
25
26

1
2 V. EFFECT OF PARTIAL CONSENT DECREE

3 A. Upon receipt of the payment set forth in Paragraph IV
4 above, the United States agrees to dismiss with prejudice all
5 claims in this action against the Fake Defendants and agrees that
6 the Fake Defendants shall be deemed to have fully and completely
7 satisfied the requirements of this partial Consent Decree.

8 B. Nothing in Paragraph V.A. or in this partial Consent
9 Decree shall release the Fake Defendants from liability for
10 response costs, if any, incurred by the United States or by any
11 other Defendant after the Effective Date of this Decree.

12 C. This partial Consent Decree shall not bind any person or
13 legal entity other than the United States, and the Fake
14 Defendants and their agents, assignees and successors in
15 interest.

16 D. The Fake Defendants hereby agree not to sue the United
17 States for any liability for action taken and expenditures made
18 by the United States, its agents, and employees prior to the
19 Effective Date of this Decree in responding to the alleged
20 release or threatened release of hazardous substances into the
21 environment from the Chrome Company site. Further, the Fake
22 Defendants agree not to assert any causes of action, claims or
23 demands against the United States for reimbursement from the
24 Hazardous Substance Response Trust Fund Established by 26 U.S.C.
25 § 9507, including claims pursuant to Sections 106(b)(2), 111 and
26 112 or CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611 and 9612, or assert
any other claims or demands for sums paid in settlement of

1 response costs or arising from any activity performed or expenses
2 incurred pursuant to this litigation or under this partial
3 Consent Decree or arising from response activities at the site,
4 prior to the effective date of this consent decree.
5

6 E. Nothing in this partial Consent Decree shall be deemed
7 to constitute preauthorization of a CERCLA action within the
8 meaning of 40 C.F.R. § 300.25(d).
9

10 VI. RESERVATION OF RIGHTS

11 Except as provided in Paragraph V. of this Decree, the
12 United States reserves all claims, demands, and causes of action,
13 past or future, judicial or administrative, in law or equity,
14 including but not limited to, cost recovery and injunctive relief
15 and natural resource damages, against any other person or entity,
16 including the Defendant. Nothing contained herein, except as
17 provided in Paragraph V.A., of this Decree shall in any way limit
18 or restrict the response and enforcement authority of the United
19 States to initiate appropriate action, either judicial or
20 administrative, against the Fake Defendants or against any other
21 person or entity not a party to this Decree under Sections 104,
22 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607. Any
23 claim, cause of action or defense which the United States or the
24 Fake Defendants may have against any other person or entity not a
25 party to this Decree, including but not limited to, claims for
26 indemnity or contribution, is expressly reserved.

1 Except as expressly provided in Paragraph V., nothing
2 contained in this Decree shall be construed to limit the right of
3 the United States to take judicial or administrative action to
4 enforce federal or state environmental laws or this partial
5 Consent Decree.
6

7 VII. RETENTION OF JURISDICTION

8 The Court shall retain jurisdiction of this matter to
9 enforce the terms and conditions of this partial Consent Decree.
10

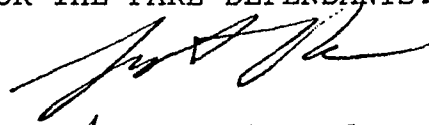
11 VIII. NOTICE TO PARTIES

12 Any notice required under this partial Consent Decree shall
13 be sent by regular mail to Harry Fake at the address set forth on
14 its signature page attached hereto. Notice to EPA and the
15 Department of Justice shall be by registered mail and shall be to
16 the addresses listed in Paragraph IV. above.

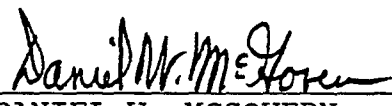
17 IX. MODIFICATION

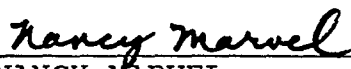
18 No modification shall be made to this partial Consent Decree
19 without written notification to and written approval of the
20 parties hereto and the Court. The notification required by this
21 paragraph shall set forth the nature of and the reasons for the
22 requested modifications. No oral modification of this partial
23 Consent Decree shall be effective.
24
25
26

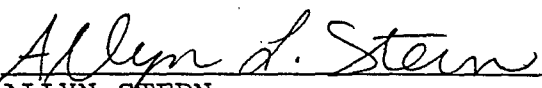
FOR THE FAKE DEFENDANTS:

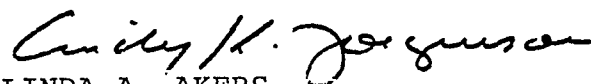

Harry S. Fake

FOR THE PLAINTIFF:


DANIEL W. MCGOVERN
Regional Administrator
EPA, Region 9


NANCY MARVEL
Regional Counsel
EPA, Region 9


ALLYN STERN
Office of Regional Counsel
EPA, Region 9
1235 Mission Street
San Francisco, CA 94103


LINDA A. AKERS
United States Attorney
District of Arizona

1
2
3 Cindy Jorgenson
CINDY JORGENSEN
4 Assistant United States Attorney
110 South Church Street
Suite 8310
5 Tucson, Arizona 85701
6 (602) 670-6511

7
8 Richard B. Stewart
9 RICHARD B. STEWART
10 Assistant Attorney General
11 Environment and Natural Resources
12 Division

13 Karen S. Dworkin
14 KAREN S. DWORKIN
15 Environmental Enforcement Section
16 U.S. Department of Justice
17 P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-2778

18 IT IS SO ORDERED, ADJUDGED AND DECREED

19
20
21 DATED:

4/26/91

22 Richard M. Bily
23 UNITED STATES DISTRICT JUDGE
24 DISTRICT OF ARIZONA
25
26

Principal = 3750.00
Annual Interest Rate = 8.47%
Periods per Year = 12
Total periods = 12
Payment = 327.02

Period	Interest Payment	Principal Payment	Principal Balance	Total Interest
1	26.47	300.55	3449.45	26.47
2	24.35	302.67	3146.78	50.82
3	22.21	304.81	2841.96	73.03
4	20.06	306.96	2535.00	93.09
5	17.89	309.13	2225.87	110.98
6	15.71	311.31	1914.56	126.69
7	13.51	313.51	1601.05	140.20
8	11.30	315.72	1285.32	151.50
9	9.07	317.95	967.37	160.57
10	6.83	320.19	647.18	167.40
11	4.57	322.45	324.73	171.97
12	2.29	324.73	0.00	174.26